

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

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Case Title: Memorial Medical Center, Inc.

Case Number: 05-14043

Document Information

Description: Motion By Creditor Alex Reyes, Creditor Rudy Reyes. For Relief From Stay As To Civil lawsuit 2004-1249 Filing Fee \$ 150.00 Receipt # 16505-NR.

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Submitted By: George Giddens

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

MEMORIAL MEDICAL CENTER, INC.,)
)
Debtor.)

Case No. 05-14043MA
(Chapter 7)

**MOTION TO LIFT STAY AS TO
CREDITORS REYES**

COME NOW Alex Reyes and Rudy Reyes, Personal Representatives of the Estate of Amelia Reyes (hereinafter "Movant"), by and through their attorneys of record, George Dave Giddens, Jr., Esq. and Joel T. Newton, Esq., and hereby move the Court as follows:

1. This Court has jurisdiction of this contested matter pursuant to 11 U.S.C. §§ 362 and 363.
2. On or about May 19, 2005, a petition for involuntary bankruptcy under Chapter 7 of the Bankruptcy Code was filed by unrelated creditors against Memorial Medical Center, Inc. (hereinafter "Debtor").
3. Movants are the Personal Representatives of the Estate of Amelia H. Reyes, deceased, and reside in Las Cruces, Dona Ana County, New Mexico.
4. Debtor is not-for-profit corporation, formerly operating a hospital in Dona Ana, County, New Mexico.
5. The Movants are claimants in a pending medical malpractice action entitled *Alex Reyes and Rudy Reyes, Personal Representatives of the Estate of Amelia Reyes v. Memorial*

Medical Center, David Hoekenga, M.D., Khalid Khan, M.D., and Timothy McComas, M.D.,
Cause No. 2004-1249, County of Dona Ana, State of New Mexico (the "Lawsuit").

6. The Movants seek leave of this Court to liquidate the claims which have been or may be stated in the Lawsuit and to seek recovery to the extent of insurance proceeds covering the claims. Any excess judgment above insurance recovery would be an unsecured claim against the estate of the Debtor and, therefore, leave to pursue the claim would not harm or permit diminution of the estate.

7. Counsel for Movants has contacted Debtor's counsel to seek concurrence for the relief sought herein and Debtor's counsel refused to concur.

8. There has not yet been an order for relief granted in the action; thus, no trustee has been appointed from whom concurrence to this motion could be requested.

WHEREFORE, Movant requests that the Court enter an Order lifting the automatic stay pursuant to 11 U.S.C. § 362 and any other applicable rules or orders to allow Movant to liquidate its claims against Debtor Memorial Medical Center and seek recovery to the extent of insurance proceeds covering the tort claims alleged in the civil lawsuit, *Alex Reyes and Rudy Reyes, Personal Representatives of the Estate of Amelia Reyes v. Memorial Medical Center, David Hoekenga, M.D., Khalid Khan, M.D., and Timothy McComas, M.D.*, Cause No. 2004-1249, County of Dona Ana, State of New Mexico, and, upon liquidation of that claim, to the extent any judgment against Memorial Medical Center exceeds insurance proceeds, to file a proof of claim or make other application to the Court as may be required for recovery of any excess claim, and for such other relief as the court deems just and proper.

DATED this 18th day of October, 2005.

LAW OFFICES OF GEORGE “DAVE” GIDDENS JR.

By: S/submitted electronically, October 18, 2005

George Dave Giddens, Jr.
Attorneys for Alex and Rudy Reyes
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and

Joel T. Newton, Esq.
Attorney for Movants
P. O. Box 16169
Las Cruces, NM 88004
(505) 524-2121

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was mailed to:

Memorial Medical Center, Inc., alleged Debtor
C/O Registered Agent
Sutin Thayer and Brown
6565 Americas Parkway, NE
Suite 1000
Albuquerque NM 87110

Gail Gottlieb, Attorney for alleged Debtor
P.O. Box 1945
Albuquerque, NM 87103

on the 18th day of October, 2005.

S/Submitted electronically, 10-18-05
GEORGE DAVE GIDDENS, JR.